



Federal Communications Commission  
Washington, D.C. 20554

October 22, 2008

*In Reply Refer to:*  
1800B3-LAS

Charles A. Hecht and  
Alfredo Alonso  
16 Doe Run  
Pittstown, NJ 08867

Deborah E. Sizer Stringer, President  
Twin County Broadcasting Corporation  
PO Box 270  
Galax, VA 24333

Re: **AM Broadcast Auction 84**  
**MX Group 84-104**

Windsor, Virginia  
Facility ID No. 161508  
File No. BNP-20040130BJM

**Applications for New AM Station**  
**Construction Permits**

WWWJ(AM), Galax, Virginia  
Facility ID No. 68600  
File No. BMJP-20040130BHT

**Application for Major Change in**  
**Licensed AM Station**

Dear Applicants:

We have before us two mutually exclusive AM applications. Charles A. Hecht and Alfredo Alonso ("Hecht") propose a new AM station at Windsor, Virginia, and Twin County Broadcasting Corporation ("Twin") proposes to change the community of license of Station WWWWJ(AM) from Galax, Virginia, to Portsmouth, Virginia. As discussed below, we are unable find a dispositive preference for either of the applicants under Section 307(b) of the Communications Act of 1934, as amended<sup>1</sup> (the "Act"), and the applications will therefore proceed to auction.

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<sup>1</sup> 47 U.S.C. § 307(b).

**Background.** In situations such as the one before us, the grant of an application would normally be resolved by a competitive bidding process.<sup>2</sup> However, in the *Broadcast First Report and Order*, the Commission determined that competitive bidding requirements did not circumscribe its statutory mandate under Section 307(b) of the Act to provide a “fair, efficient, and equitable” distribution of radio services across the nation. To this end, the Commission directed the staff to undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications.<sup>3</sup> The Commission also noted that the FM allotment priorities fulfill its obligation under Section 307(b), and would apply in making a Section 307(b) determination regarding mutually exclusive AM applications before auction.<sup>4</sup>

**Discussion.** After careful consideration of both applications, we have determined that neither of the proposals is entitled to a dispositive Section 307(b) preference. Neither applicant proposes a first or second full-time aural service, or qualifies for a priority (3) preference by providing a first local transmission service to their respective community of license. There is currently one radio station licensed to Windsor, Virginia (population 916 persons), and four radio stations licensed to Portsmouth, Virginia (population 100,565 persons). Thus, both proposals were considered under priority (4), other public interest matters.

Under priority (4), the Commission has generally favored the provision of service to the greatest number of people.<sup>5</sup> The applicants provided the following information regarding the number of persons served by their proposals: Hecht states that its Windsor, Virginia, proposal will serve 1,675,207 persons within its 0.5 mV/m contour, 1,470,488 persons within its 2 mV/m contour, and will provide nighttime interference-free service to 22,751 persons. Twin states that its Portsmouth, Virginia, proposal will serve 1,260,097 persons within its 0.5 mV/m contour, 1,175,307 persons within its 2 mV/m contour, and provide nighttime interference-free service to 313,092 persons.<sup>6</sup>

Independent population counts by the Commission staff reveal that: Hecht’s Windsor proposal will serve 1,556,245 persons within its 0.5 mV/m contour, 1,479,151 persons within its 2 mV/m contour,

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<sup>2</sup> See *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses* (“*Broadcast First Report and Order*”), First Report and Order, 13 FCC Rcd 15920 (1998), *recon denied*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), *modified*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

<sup>3</sup> *Broadcast First Report and Order* at 15964-65.

<sup>4</sup> See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local transmission service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). The FM allotment priorities were first applied to Section 307(b) determinations in mutually exclusive AM proceedings in *Alessandro Broadcasting Co.*, Decision, 56 RR 2d 1568 (Rev. Bd. 1984).

<sup>5</sup> See *Nelson Enterprises, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 13350 (2004) (finding no error in the use of population coverage to award a Section 307(b) preference under priority (4) and endorsing continued use of population coverage differentials in evaluating Section 307(b) analyses in AM auction applications). See also *Greenup, Kentucky and Athens, Ohio*, Memorandum Opinion and Order, 6 FCC Rcd 1493, 1497 (1991) (“[U]nder priority four, other public interest matters, we will first consider simple net differences in the number of persons newly served by each proposal”).

<sup>6</sup> Moreover, Twin’s Section 307(b) showing only provides the population that would be encompassed by Station WWWJ(AM)’s new Portsmouth facility, failing to account for the population that would lose service as a result of the proposed relocation.

and will provide nighttime interference-free service to 21,296 persons;<sup>7</sup> and that Twin's Portsmouth proposal will serve 1,211,083 persons within its 0.5 mV/m contour, 1,128,919 persons within its 2 mV/m contour, and will provide nighttime interference-free service to 316,068 persons.

Staff analysis illustrates that the Hecht proposal for Windsor would provide daytime service to a greater number of persons. In contrast, Twin's Portsmouth proposal will provide new NIF service to the greatest population.<sup>8</sup> Twin's superior Portsmouth nighttime proposal therefore balances Hecht's superior daytime proposal. The communities of Windsor and Portsmouth are already provided abundant reception service.<sup>9</sup> Given these circumstances, no dispositive Section 307(b) preference emerges between the parties. In the *Broadcast First Report and Order*, the Commission stated that, once the staff has undertaken the threshold Section 307(b) analysis, "if no Section 307(b) determination is dispositive (or if more than one application remains for the community with the greater need), the applicants must then be included in a subsequently scheduled auction."<sup>10</sup> Accordingly, we find that the applicants in MX Group 84-104 should proceed to auction. We find this approach consistent with our statutory directive to grant construction permits pursuant to our competitive bidding procedures.<sup>11</sup>

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<sup>7</sup> Pursuant to 47 C.F.R. § 73.182(d), the AM groundwave signal strength necessary to provide primary service to communities with populations of 2,500 or more persons is 2 mV/m, and the AM groundwave signal strength necessary to provide primary service to communities with populations less than 2,500 persons is 0.5 mV/m. Thus, when counting the population within an AM daytime 2 mV/m field strength contour, all communities, regardless of size, are included, but when counting the population within an AM daytime 0.5 mV/m field strength contour, communities with populations of 2,500 or more persons that are located inside the 0.5 mV/m contour but outside the 2 mV/m contour must be excluded from the population count. The practical effect of the rule is that an applicant is not recognized as serving the community if it fails to render the specified signal strength intensity to the community. See *Amendment of the AM Broadcast Station Rules with Respect to Signal Coverage Requirements over Community Business and Factory Areas*, Report and Order, 49 FR 23345 (1984) (amending rule to define primary service signal strength requirement based only on a population standard).

<sup>8</sup> Currently, Station WWWJ(AM) is a Class D station with no licensed nighttime operation. In *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Notice of Proposed Rulemaking, 22 FCC Rcd 15890, 15891 (2007), the Commission recognized the importance of AM nighttime service and addressed the disparity between day and night service as one of the technical challenges specific to the AM band.

<sup>9</sup> The Commission considers five or more reception services to be "abundant." *Family Broadcast Group*, 53 RR 2d 662 (Rev. Bd. 1983), *review denied*, FCC 83-559 (Comm'n Nov. 29, 1983). See also *LaGrange and Rollingwood, Texas*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (1995).

<sup>10</sup> *Broadcast First Report and Order*, 13 FCC Rcd at 15965. The Commission recently upheld this approach in *Sharon Berlin Inglis*, FCC 08-114 (Comm'n May 22, 2008) ("[w]hile the implementation of the Commission's competitive bidding authority under Section 309(j) of the Act accommodates the agency's statutory duty under that Section to effect an equitable distribution of stations, it does not mandate a dispositive Section 307(b) finding in all MX Groups. Often, no community merits a dispositive preference after a Section 307(b) analysis, and in such cases, the staff must resolve the application conflict through the auction authority granted by Congress.").

<sup>11</sup> See 47 U.S.C. § 309(j)(1); *Broadcast First Report and Order*, 13 FCC Rcd at 15924, 15964.

**Conclusion.** Accordingly, IT IS ORDERED that the Charles A. Hecht and Alfredo Alonso application for Windsor, Virginia (File No. BNP-20040130BJM) and the Twin County Broadcasting Corporation application to change the community of license of Station WWWJ(AM) to Portsmouth, Virginia (File No. BMJP-20040130BHT) SHALL PROCEED TO AUCTION, the date of which will be announced by a subsequent Public Notice.

Sincerely,

*Lisa Scanlan*

Peter H. Doyle *PHD*  
Chief, Audio Division  
Media Bureau

cc: John M. Pelkey, Esq.  
James P. Riley, Esq.